Davenport and Brown *and* Local 1487, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 1–CA–30261

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 3, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Davenport and Brown, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 24, 1993, counsel for the General Counsel filed a Motion for Summary Judgment with the Board. On May 26, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated May 5, 1993, the Regional Attorney for Region 1 notified the Respondent that unless an answer was received by close of business May 12, 1993, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Seabrook, New Hampshire, and a jobsite located at the Federal Building in Burlington, Vermont, has been engaged as a contractor in the building and construction industry. During the calendar year ending December 31, 1992, a representative period, and in the course and conduct of its business operations, the Respondent performed services valued in excess of $50,000 in States other than the State of New Hampshire. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about October 13, 1992, the Respondent recognized the Union as the exclusive collective-bargaining representative of its employees in an appropriate unit by entering into a collective-bargaining agreement with the Union applicable to the Federal Building jobsite covering the period from October 13, 1992, through April 30, 1993. Such recognition was granted without regard to whether the Union had attained majority status under Section 9(a) of the Act. The appropriate bargaining unit consists of:

> All carpenters employed by [the] Davenport and Brown at its Federal Building jobsite in Burlington, Vermont, but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

For the period October 13, 1992, through April 30, 1993, the Union, pursuant to Section 9(a) of the Act, has been the limited exclusive collective-bargaining representative of the Respondent's unit employees.[1]

Since about November 20, 1992, and without the Union's consent, the Respondent has failed and refused to make payments to Northern New England Carpenters Health and Welfare Fund, the Northern New England Pension Plan, the Northern New England District Council of Carpenters Apprenticeship and Training Fund, and the Massachusetts State Carpenters Annuity Fund, as required by its agreement with the Union, which subjects relate to the unit employees' wages, hours, and other terms and conditions of employment and are mandatory subjects of bargaining. By engaging in such conduct, the Respondent has failed and refused, and is failing and refusing, to bargain with the Union as the exclusive representative of the Respondent's unit employees within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing and refusing to make payments to the Northern New England Carpenters Health and Welfare

[1] As the complaint alleges that the Respondent is engaged in the building and construction industry, and that it recognized the Union without regard to whether the Union had attained majority status under Sec. 9(a), we find that the bargaining relationship entered into between the parties was established pursuant to Sec. 8(f) of the Act, and that the Union is the limited exclusive representative of the Respondent's unit employees. See *John Deklewa & Sons*, 282 NLRB 1375, 1386–1387 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

Fund, the Northern New England Pension Plan, the Northern New England District Council of Carpenters Apprenticeship and Training Fund, and the Massachusetts State Carpenters Annuity Fund, the Respondent has failed and refused to bargain with the Union and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall be ordered to make the payments to the various fringe benefit funds it has not made since about November 20, 1992, as required by its collective-bargaining agreement with the Union,[2] and to make whole unit employees for any losses or expenses incurred as a result of its failure to make such payments, as prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), with interest on such amounts to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Davenport and Brown, Seabrook, New Hampshire, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 1487, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, which is the recognized limited exclusive bargaining representative of the Respondent's employees in an appropriate unit, by failing and refusing, without the Union's consent, to make payments to the Northern New England Carpenters Health and Welfare Fund, the Northern New England Pension Plan, the Northern New England District Council of Carpenters Apprenticeship and Training Fund, and the Massachusetts State Carpenters Annuity Fund, as required by the Respondent's contract with the Union. The appropriate bargaining unit consists of:

> All carpenters employed by [the] Davenport and Brown at its Federal Building jobsite in Burlington, Vermont, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the payments to the Northern New England Carpenters Health and Welfare Fund, the Northern New England Pension Plan, the Northern New England District Council of Carpenters Apprenticeship and Training Fund, and the Massachusetts State Carpenters Annuity Fund that have not been made since about November 20, 1992, as set forth in the remedy section of this Decision and Order.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to make the required fringe benefit payments, with interest as set forth in the remedy section of this Decision and Order.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its jobsite in Burlington, Vermont, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 1487, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, which is the limited exclusive collective-bargaining representative of our employees in an appropriate bargaining unit, by failing and refusing, without the Union's consent, to make payments to the Northern New England Carpenters Health and Welfare Fund, the Northern New England Pension Plan, the Northern New England District Council of Carpenters Apprenticeship and Training Fund, and the Massachusetts State Carpenters Annuity Fund. The appropriate bargaining unit consists of:

> All carpenters employed by us at our Federal Building jobsite in Burlington, Vermont, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the payments to the Northern New England Carpenters Health and Welfare Fund, the Northern New England Pension Plan, the Northern New England District Council of Carpenters Apprenticeship and Training Fund, and the Massachusetts State Carpenters Annuity Fund that have not been made since about November 20, 1992, and WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to make such payments, with interest.

DAVENPORT AND BROWN